HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 18740 of 2000

Dated 27th June, 2007

Between

Gurajala Venkatarami Reddy

…Petitioner

and

The Commissioner of Prohibition & Excise,
AP, at Hyderabad, and, anr

…Respondents.

HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No. 18740 of 2000

ORDER:

This Writ Petition is filed questioning the order of confiscation dated 31-7-1999 in proceedings No.B2/1773/98 passed by the Deputy Commissioner of Prohibition and Excise, Kurnool, as confirmed by the appellate authority-Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad in Cr.No.2894/DPE/99/B2, dated 19-7-2000.

On 22-8-1996, the Prohibition and Excise Inspector, Pulivendula, along with his staff, while conducting route watch on Gurazala--Simhadirpuram road, they intercepted and seized the jeep bearing registration No. AP.04B 703 on the ground that the said vehicle was being used for illegal transportation of 35 cartoons non duty paid liquor. The said seizure was subsequently reported to the second

respondent-Deputy Commissioner of Prohibition and Excise, and, a case was registered in Cr.No.212/95-96 for the alleged violation of the provision under Section 8(b) of the A.P. Prohibition Act 1995. Subsequently, with reference to the said offence, separate confiscation proceedings were initiated. In the confiscation proceedings, the petitioner was issued show cause notice, and the primary authority had passed order of confiscation on the ground that the owner failed to file explanation to the show cause notice. On appeal, the appellate authority confirmed the order of the primary authority by recording the finding that the owner of the vehicle did not exercise due diligence to prevent the crime by his vehicle and failed to file explanation to the show cause notice.

In this Writ Petition, it is submitted by the learned Counsel appearing for the petitioner that no valid reasons are assigned by the primary authority for confiscating the vehicle. It is further submitted that no hearing opportunity was given to the petitioner after issuance of show cause notice.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that as the vehicle was used for transportation of non-duty paid liquor in contravention of the provision under Section 8(b) of the A.P. Prohibition Act, 1995, confiscation order was passed. It is further submitted that the petitioner who is the owner of the vehicle, was given opportunity, but however, he did not file any explanation to the show cause notice.

Under the scheme of the A.P. Prohibition Act, 1995, under Section 13 (c) of the Act, only an opportunity is provided. In absence of any specific provision for hearing, it cannot be said that the order of

confiscation is passed without any proper opportunity. But, however, the primary authority without recording any independent reasons, merely on the ground that explanation was not filed, ordered confiscation. The appellate authority also by recording that the owner of the vehicle did not take proper diligence, confirmed the order of the primary authority. As much as the primary authority has not recorded reasons for confiscation, and, as now, it is pleaded by the learned Counsel for the petitioner that the vehicle was used without his knowledge and connivance, I deem it a fit case, where the petitioner should be given further opportunity to file explanation before passing appropriate orders in confiscation proceedings. In that view of the matter, the orders under challenge, i.e. order dated 31-7-1999 in proceedings No.B2/1773/98 passed by the Deputy Commissioner of Prohibition and Excise, Kurnool, and order in Cr.No.2894/DPE/99/B2, dated 19-7-2000 passed by the appellate authority-Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, are set aside and the matter is remanded to the Deputy Commissioner of Prohibition and Excise, Kurnool, for fresh consideration and to pass appropriate orders. The petitioner is granted six weeks' time from the date of receipt of this order to file explanation to the show cause notice and on such filing explanation, the Deputy Commissioner of Prohibition and Excise shall consider the same and pass appropriate orders on merits. It is made clear that if no explanation is filed by the petitioner within the time stipulated above, it is open to the primary authority to pass appropriate orders on merits.

The Writ Petition is allowed with the directions as indicated above. The bank guarantee furnished by the petitioner shall continue till the appropriate orders are passed by the primary authority. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 27-6-2007
Msnr.